

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

SANTOS DIAZ-ALVAREZ

Plaintiff

vs

RAMALLO BROS. PRINTING, INC.;
ROBERTO LUCCO; INSURANCE
COMPANY ABC

Defendants

CIVIL 13-1563CCC

OPINION

Before the Court is defendant Ramallo Bros. Printing, Inc.'s Motion to Dismiss for Lack of Prosecution Pursuant to Fed. R. Civ. P. 41(b) (**d.e. 36**) filed on May 9, 2017 and plaintiff Santos Díaz- Alvarez's opposition (d.e. 40) filed on May 23, 2017. Defendant seeks dismissal of plaintiff's claims against Ramallo, with prejudice, based on plaintiff's inaction.

The instant action was filed by plaintiff against his employer Ramallo Bros. Printing, Inc. and his immediate supervisor Roberto Lucco on July 19, 2013. On September 26, 2013, after being granted an extension of time, defendants filed an answer (d.e. 5). The Case Management Order (d.e. 7) was entered on September 30, 2013 and on October 2, 2013 the Court granted defendants an extension of time to serve initial disclosures (d.e. 10). On March 14, 2014, defendant Ramallo Bros. Printing, Inc. filed a voluntary bankruptcy petition under Chapter 11 of the U.S. Bankruptcy Code and on March 28, 2014 requested a stay of the case, which was granted. (d.e. 11 and

d.e. 12). The stay was lifted on September 1, 2016 and a status conference was set for October 6, 2016 (d.e. 23).

Defendants filed a Motion to Dismiss (d.e. 25) on October 6, 2016. The status conference was vacated and plaintiff ordered to file an opposition by October 27, 2016 (d.e. 30). Plaintiff failed to comply with the Court's Order, an opposition was never filed, and the Court granted defendant's Motion to Dismiss and entered partial judgment dismissing plaintiff's ADA and Law 44 claims against co-defendant Roberto Lucco and the claims under Articles 1802 and 1803 as to both defendants (d.e. 32 and d.e. 33).

Rule 41(b) of the Federal Rules of Civil Procedure authorizes a federal trial court to dismiss with prejudice for lack of prosecution. However, "a dismissal with prejudice is a harsh remedy and should be resorted to only in extreme cases." *Pease v. Peters*, 550 F.2d 698, 700 (1st Cir. 1977). A review of the entire case file leads us to conclude that dismissal pursuant to Fed. R. Civ. P. 41(b) is not warranted in this case. Accordingly, the Motion to Dismiss for Lack of Prosecution Pursuant to Fed. R. Civ. P. 41(b) (**d.e. 36**) filed by Ramallo Bros. Printing, Inc.'s on May 9, 2017 is DENIED.

This notwithstanding, plaintiff's argument that when he failed to oppose the Motion to Dismiss he "was conceding defendant's request" is a deceptive means of taking advantage of his own inaction. He did not consent to partial dismissal; he simply failed to oppose the dismissal motion and the Court had to undertake the research and analysis that corresponded to his defense. This is a manner of protracting the proceedings. Any future conduct of this nature will be sanctioned.

The parties are reminded that this case is set for Pretrial/Settlement Conference on July 28, 2017. The trial will be set during this conference.

SO ORDERED.

At San Juan, Puerto Rico, on June 14, 2017.

S/CARMEN CONSUELO CEREZO
United States District Judge